

REC'D  
REGION V  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

'98 DEC 23 P12:14

In the Matter of )

ELKHART PRODUCTS CORP. )

Respondent )

US ENVIRONMENTAL AGENCY  
DOCKET NO. 5-CAD-008-1998  
REGION V

Judge Pearlstein

**CONSENT AGREEMENT AND CONSENT ORDER**

Complainant, the United States Environmental Protection Agency ("U.S. EPA"), having filed an Administrative Complaint and Notice of Proposed Order Assessing a Penalty ("Complaint") filed on June 19, 1998, against Respondent Elkhart Products Corporation ("Respondent"), the Parties herein; and

U.S. EPA and Respondent, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Consent Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

**I. PRELIMINARY STATEMENT**

1. U.S. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

2. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, the Administrator of U.S. EPA published as a final rule the National Emission Standards for Chromium Emissions from

Hard and Decorative Electroplating and Chromium Anodizing Tanks ("Chrome Plating NESHAP").

3. The Chrome Plating NESHAP regulations are codified at 40 C.F.R. Part 63, Subpart N, §§ 63.340-63.347.

4. Section 113(a)(3)(A) of the Act, 42 U.S.C. § 7413(a)(3)(A), in applicable part, authorizes the Administrator to issue an administrative penalty order in accordance with Section 113(d) of the Act, 42 U.S.C. § 7413(d), for violating any requirement or prohibition of any rule promulgated, issued or approved pursuant to, among other things, Section 112 of the Act, 42 U.S.C. § 7412.

5. The Complaint alleges that Respondent violated the requirements of the Chrome Plating NESHAP between January 25, 1997 and June 1997, for its two facilities located at 1255 Oak Street, Elkhart, Indiana, and 700 Rainbow Road, Geneva, Indiana.

6. Respondent stipulates that U.S. EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent.

7 Respondent admits the jurisdictional allegations in the Complaint.

8 Respondent neither admits nor denies the factual allegations in the Complaint.

9 Respondent consents to the assessment of the civil penalties provided in the Order below.

10. Respondent certifies that it is now in compliance with the Clean Air Act and the requirements of 40 C.F.R. Part 63, Subpart N, §§ 63.340-63.347, at any facility that it owns or operates.

11. This Consent Agreement and Consent Order shall apply to and be binding upon Respondent, its officers, directors, successors and assigns, including, but not limited to, subsequent purchasers.

12 Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

## **II. TERMS OF SETTLEMENT**

13. Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413 ("CAA"), the nature of the violations, and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is in the amount of THIRTY THOUSAND DOLLARS (\$30,000).

14. Respondent consents to the issuance of the Consent Agreement hereinafter recited and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

15. Within thirty (30) days of execution of this Consent Agreement and Consent Order by the Acting U.S. EPA Regional Administrator, Region 5, Respondent shall submit a cashier's or certified check, to the order of the "Treasurer, United States of America," in the amount of THIRTY THOUSAND DOLLARS (\$30,000), to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

A copy of check shall simultaneously be mailed to the Regional Hearing Clerk (Mail Code R-19), Counsel for the Complainant (Mail Code C-14J) and the Branch Secretary, Air Enforcement

and Compliance Assurance Branch (Mail Code AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. A transmittal letter identifying the name and docket number should accompany both the remittance and the copies of the check.

16. Interest and late charges shall be paid as specified in Paragraph 18 herein.

17. The penalty specified in Paragraph 13, above, shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.

18. Pursuant to 31 U.S.C. § 3717, U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will thereafter begin to accrue on the civil penalty if it is not paid within thirty days following U.S. EPA's execution of the Consent Agreement and Consent Order. Interest will be assessed at the rate of the United States treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. § 102.13(d) and (e).

19. Respondent's failure to comply with the provisions of Paragraph 15 may result in the referral of this matter to the U.S. Department of Justice for Collection. The validity, amount and appropriateness of the penalty is not subject to review in collection proceedings, as stated at 7 U.S.C. § 1361 (a) (5)

20. This Consent Agreement and Consent Order constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 113 of the Clean Air Act for the civil violations alleged in the Complaint. Nothing in this Consent Agreement and Consent Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and Consent Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by Complainant, and it is the responsibility of Respondent to comply with such laws and regulations.

21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

22. This document constitutes an "enforcement response" as that term is used in the Clean Air Act Civil Penalty Policy for the purposes of determining Respondent's "full compliance history" as addressed in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

23. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Consent Order.

24. The effective date of this Consent Agreement and Consent Order is the date on which it is signed by the Acting Regional Administrator.

## In the Matter of Elkhart Products Corporation:

For Complainant:

*for* William L. MacDowell  
Stephen Rothblatt, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5

Date: 12/22/98

For Respondent:

Denis G. Daly  
Denis G. Daly, Secretary  
Elkhart Products Corporation

Date: December 14, 1998

In the Matter of Elkhart Products Corporation:

**III. ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

Date: December 23, 1998

A handwritten signature in cursive script, reading "David A. Ullrich", written over a horizontal line.

DAVID A. ULLRICH

Acting Regional Administrator

U.S. Environmental Protection Agency, Region 5

**CERTIFICATE OF SERVICE**

98 DEC 23 P12:14

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Consent Order (CACO), to Elkhart Products Corporation was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; and that a second original of the CACO was sent by Certified Mail, Return Receipt Requested, to:

Timothy Hoffman  
Collidge and Wall  
Suite 600  
33 West First Street  
Dayton, Ohio 45402

I also certify that copies of the CACO were sent by first class mail to:

Honorable Andrew S. Pearlstein  
Administrative Law Judge  
U.S. EPA  
Mail Code A-110  
401 M Street, S.W.  
Washington, D.C. 20460

Michael Powell, President  
Elkhart Products Corporation  
1255 Oak Street  
Elkhart, Indiana 46515

Dale M. Schmittendorf, Plant Manager  
Elkhart Products Corporation  
700 Rainbow Road  
Geneva, Indiana 46740

on the 23rd day of December, 1998.

Betty Williams  
Betty Williams, Secretary  
AECAS (IL/IN)

Certificate Number: P140 894276